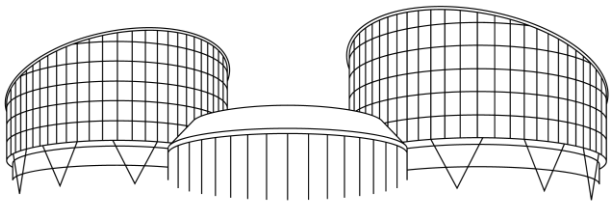

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LABSI v. SLOVAKIA

(Application no. 33809/08)

JUDGMENT

STRASBOURG

15 May 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.

In the case of Labsi v. Slovakia**,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 17 April 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 33809/08) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Algerian national, Mr Mustapha Labsi ("the applicant"), on 18 July 2008.

2. The applicant was initially represented by Ms M. Kolíková, a lawyer practising in Bratislava. As from 9 July 2010 Mr M. Hrbáň, a lawyer practising in Bratislava, took over defending the applicant's rights before the Court in agreement with Ms M. Kolíková (for further details see paragraphs 62-67 below). The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged that his expulsion to Algeria amounted to a breach of Articles 3, 13 and 34 of the Convention.

4. On 8 June 2010 the Court decided to communicate the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969. At present he is detained in El Harrach prison in Algeria.

A. Background information

6. The applicant left Algeria for Italy in 1991. He subsequently spent time in Spain, Switzerland, Canada, Pakistan and Afghanistan. In 1999 the applicant arrived in the United Kingdom where he applied for asylum. His request was dismissed.

7. On 13 January 2001 the applicant was placed in custody in the United Kingdom as a result of several accusations made against him in different countries. The only one that was pursued was that of "*association de malfaiteurs*". It was imputed to the applicant that, when living in Montreal, he had been involved in the supply of false documents which had been used by individuals in France when they had fled arrest for offences committed there.

8. The United Kingdom extradited the applicant to France. On 7 April 2006 he was found guilty by a French court of involvement, as a member of an organised group, in the preparation, between 1996 and 1998, of a terrorist act in France and several other countries and of forging identity documents. He received a five-year sentence and was excluded from the territory of France. The applicant did not appeal and was released immediately upon conviction on the ground that he had served the sentence in the context of his prior detention while awaiting extradition. On 11 April 2006 the applicant arrived in Slovakia.

9. In the meantime, on 1 June 2005, an Algerian court had convicted the applicant, *in absentia*, of membership of a terrorist organisation acting both in Algeria and abroad, and of forgery. He was sentenced to life imprisonment.

B. The applicant's family ties in Slovakia

10. In January 2001 the applicant married a Slovakian national in London. A child was born to the couple on 2 August 2001.

11. With effect from 25 October 2007 the applicant's wife was deprived of legal capacity to act. The child was entrusted to the care and custody of the applicant's wife's mother. On 29 May 2008 the latter, acting as guardian of her daughter, petitioned for divorce. The divorce proceedings are pending before the Bratislava IV District Court; it is not clear from the parties' submissions whether a final decision has been given.

C. Proceedings in Slovakia

1. Asylum requests of the applicant

12. On 18 July 2006 the Migration Office dismissed the applicant's first asylum request. The Bratislava Regional Court dismissed the applicant's action challenging that decision.

13. On 24 September 2007 the Migration Office dismissed his second request for asylum. It held that there were no obstacles to the administrative expulsion of the applicant to Algeria. On 30 October 2007 the applicant's lawyer waived the right to challenge that administrative decision. It thus became final on that date.

14. On 6 October 2008 the Migration Office dismissed the applicant's third request for asylum. It further decided not to afford the applicant the status of "subsidiary protection" (*doplnková ochrana*) under the Asylum Act 2002.

15. On 4 February 2009 the Bratislava Regional Court quashed that decision. It ordered the administrative authority to establish all the relevant facts and to give comprehensive reasons for its conclusion.

16. On 5 June 2009 the Migration Office again decided not to grant asylum to the applicant and not to provide him with subsidiary protection under the Asylum Act 2002.

17. It was found that the applicant's fears were subjective in nature and unsubstantiated by objective facts, that he had failed to show that he was subjected to persecution and that such persecution was politically motivated. If returned to Algeria, the applicant could seek a retrial on the ground that he had already been convicted in France and had served the sentence imposed in that context. Moreover, the applicant represented a security risk to the Slovak Republic and to society. His arguments under Article 3 of the Convention could not be taken into account because the matter under review concerned his asylum status and not his extradition.

18. On 28 October 2009 the Bratislava Regional Court upheld the Migration Office's decision on the applicant's third asylum request.

19. The applicant appealed. He argued that he risked being subjected to torture and inhuman and degrading treatment and being sentenced to death if returned to Algeria. The applicant also argued that he had family ties in Slovakia and that he wished to take care of his wife, who suffered from an illness, and their son.

20. On 30 March 2010 the Supreme Court upheld the Regional Court's judgment of 28 October 2009. The Supreme Court held, in particular, that the applicant's wish to maintain ties with his wife and child, who were Slovakian nationals, was not a relevant ground for granting him asylum. Furthermore, the applicant had been convicted in Algeria of criminal offences linked to the activities of the Salafist Group for Preaching and Combat, the aim of which was to establish, by violent means,

a fundamentalist Islamic State in Algeria. Armed attacks carried out by the group could not be considered as a means of political struggle justifying the applicant's protection from persecution for political opinions within the meaning of the Asylum Act 2002.

21. As to the alleged risk of the applicant's ill-treatment in Algeria, the Supreme Court held that the Court's case-law under Article 3 of the Convention concerned cases of expulsion or extradition but not those relating to requests for asylum.

22. The applicant had not shown that justified reasons existed to believe that he could be persecuted for any of the reasons laid down in section 8 of the Asylum Act 2002, namely on the ground of his race, ethnic origin, belonging to a social group, for religious reasons or because of his political opinion.

23. In the Supreme Court's view, the purpose of granting subsidiary protection was to avoid unsuccessful asylum seekers being removed from Slovakia in certain justified cases. However, such subsidiary protection was excluded, *inter alia*, where there were serious reasons to believe that an asylum seeker represented a risk to society or the safety of the State in which he or she applied for asylum. Reference was made to Articles 12 and 17 of the Council of the European Union Directive 2004/83/EC and sub-sections 2(d) and (e) of section 13c of the Asylum Act 2002.

24. The applicant's conviction in France, on 7 April 2006, of involvement in a terrorist organisation and his admission that he had been trained in Afghanistan in handling weapons and explosives, as well as other information gathered by the Office for the Fight Against Organised Crime, justified the conclusion that the applicant could provide assistance to persons suspected of involvement in terrorist groups operating worldwide. The decision not to grant subsidiary protection to the applicant was therefore lawful. That conclusion could not be affected by the express admission by the Migration Office, in the context of the asylum proceedings, that the applicant could be exposed to a real risk of inhuman treatment if returned to Algeria.

25. Finally, the Supreme Court noted that the applicant had unlawfully left for Austria while proceedings concerning his asylum request in Slovakia had been pending and that he had lodged an asylum request in Austria. It concluded that the applicant was not genuinely interested in protection by the Slovakian authorities.

26. The Supreme Court's judgment was served on the applicant and became final on 16 April 2010.

2. Other proceedings and facts relating to the applicant's stay in Slovakia and his expulsion

27. On 20 July 2006, the Border and Foreigners Police Department in Bratislava ordered the applicant's expulsion and banned him from entering

Slovakia for ten years. The decision became final and binding on 12 October 2006. The applicant was expelled to Austria on the basis of the decision.

28. In May 2007 the Austrian authorities returned the applicant to Slovakia where he was placed under provisional arrest. On 20 June 2007 he was remanded in custody pending his extradition on a warrant in connection with the above-mentioned Algerian court's judgment of 1 June 2005.

29. On 30 November 2007 the Bratislava Regional Court gave its consent to the applicant's extradition to Algeria. On 22 January 2008 the Supreme Court approved that decision. On 13 March 2008 the Constitutional Court suspended the effect of the Supreme Court's decision pending its decision on the applicant's complaint that he would run the risk of ill-treatment if he were extradited to his country of origin.

30. On 26 June 2008 the Constitutional Court quashed the Supreme Court's decision of 22 January 2008. It instructed the latter to re-examine the case with particular emphasis on the alleged threat of the applicant being subjected to treatment contrary to Article 3 of the Convention in the event of his extradition.

31. On 7 August 2008 the Supreme Court found that the applicant's extradition to Algeria was not permissible. On the same date the applicant was released.

32. In its judgment the Supreme Court relied on a number of international documents, such as reports of the UN Human Rights Committee of 2007 and the UN Committee against Torture of 2008, a document prepared by the UNHCR, documents issued by Amnesty International, the United States Department of State, the British Foreign and Commonwealth Office, Human Rights Watch and the Court's judgment in *Saadi v. Italy* [GC], no. 37201/06, ECHR 2008).

33. In particular, the Supreme Court referred to the broad powers of investigation of the Department of Intelligence and Security (DRS), documented reports on detention of suspects incommunicado in secret DRS centres, and numerous reports of torture and inhuman or degrading treatment of people at the hands of the DRS. The information available indicated that the DRS had systematically used torture and other forms of ill-treatment in respect of individuals deemed to have information about terrorist activities.

34. Furthermore, the law and practice in Algeria did not exclude the use in judicial proceedings of evidence which had been extracted under torture. The Algerian authorities had refused to co-operate with special rapporteurs or working groups established within the UN system and with non-governmental organisations with a view to clarifying the position. Similarly, the Algerian authorities had refused to allow monitoring the situation of people who had been returned to that country.

35. The Supreme Court noted that the relevant regulation did not list Algeria as a safe country of origin. It concluded that there were justified reasons to fear that the applicant would be exposed to treatment contrary to Article 3 of the Convention in the event of his extradition to Algeria.

36. Subsequently the applicant was apprehended and placed in a detention centre for foreigners in Medveďov on the basis of the Border and Foreigners Police decision of 7 August 2008. Reference was made to the above-mentioned decision of 20 July 2006 to expel the applicant and to exclude him from the territory of Slovakia for ten years. The decision stated that proceedings concerning the applicant's expulsion were still under way.

37. On 17 October 2008 the applicant requested leave to stay in Slovakia (*tolerovaný pobyt*). The police dismissed the request.

38. On 3 February 2009 the applicant was released from the detention centre for foreigners in Medveďov. He was placed in an accommodation facility for asylum seekers in Opatovská Nová Ves and, later, in a similar facility in Rohanovce. During his stay in those facilities the applicant's freedom of movement was restricted. He unsuccessfully sought redress before the Supreme Court and the Constitutional Court, which decided on his claim on 3 March 2009 and 16 December 2009 respectively.

39. On 19 December 2009 the applicant left the facility in Rohanovce and arrived in a centre for refugees in Austria. The Austrian authorities returned him to Slovakia on 11 March 2010.

40. On 22 April 2010 the Minister of the Interior informed the media that the applicant had been expelled from Slovakia and escorted to Algeria in accordance with the decision of the Border and Foreigners Police Department in Bratislava of 20 July 2006. The applicant's representative learned about his expulsion from press articles.

D. Information obtained by the respondent Government from the Algerian authorities

41. A letter from the Algerian Ministry of Justice of 2 July 2007 indicated that the Algiers Criminal Court had convicted the applicant *in absentia*, on 1 June 2005, of belonging to a terrorist organisation acting both in Algeria and abroad and of forgery under Articles 87bis, 87bis §§ 3 and 6 and Article 222 of the Criminal Code. His extradition was requested with a view to re-trying him for the same offences. His previous conviction *in absentia* would lose effect upon his return to Algeria pursuant to Article 326 of the Criminal Code. In the event of his extradition the applicant would have an adversarial trial before the criminal court, the judgment of which could be appealed against to the Supreme Court. Assistance by legal counsel was mandatory in such proceedings. Under the Criminal Code the offences imputed to the applicant were not punishable by capital penalty.

42. In a letter of 25 September 2007 a representative of the Algerian Ministry of Justice indicated that his country had not yet ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Nevertheless, the law in force established a system of control permitting detained persons to seek redress in the event of a breach of their rights. Furthermore, the collaborators of the International Committee of the Red Cross had the possibility of visiting detained persons in private. Torture and other forms of ill-treatment were subject to heavy penalties under the Algerian Criminal Code.

43. In a letter of 22 September 2010 the Algerian Ministry of Justice indicated that the applicant's conviction by the judgment of 1 June 2005 had lost effect following his return to Algeria. He was being detained in El Harrach prison under an order issued by the indictment chamber of the Algiers Criminal Court. The applicant had the right to meet an advocate in private, to receive visits by members of his family, to file complaints and to medical care. The applicant's trial was scheduled for October 2010. He had the right to assistance by counsel and could avail himself of a variety of procedural rights incorporated in the Code of Criminal Procedure. Finally, the letter indicated that several persons suspected of terrorism had been extradited or expelled to Algeria from the United Kingdom, Spain or the United States and that all those persons had been treated in accordance with the law.

44. On 13 December 2010 the Slovakian Ministry of the Interior asked the Algerian Embassy in Vienna for a visit of the former's State Secretary to be arranged during which he could discuss the applicant's situation with the Algerian penitentiary administration. The Government submitted no further information as regards that initiative.

45. In a verbal note of 5 April 2011 the Algerian Embassy in Vienna informed the Slovakian Ministry of Foreign Affairs that the Algiers Criminal Court had convicted the applicant, on 12 January 2011, of having belonged to a terrorist group acting abroad. The trial had been public and covered by the media and the applicant had been defended by counsel of his choice. He had been sentenced to a three-year prison term with twelve months suspended and to a fine of 500,000 Algerian dinars. The applicant had also been prohibited from exercising public functions after his release and from exercising his property rights.

46. The verbal note further stated that the charges of having belonged to a terrorist group acting within Algeria and of complicity in forgery and use of forgeries had not been upheld by the tribunal. Both the prosecution and the applicant's counsel had appealed against the judgment on 17 January 2011.

47. No further information has been provided.

II. PROCEEDINGS BEFORE THE COURT

A. Interim measures under Rule 39 of the Rules of Court

48. On 18 July 2008 the Acting President of the Court's Chamber decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Algeria.

49. On 13 August 2008 the Acting President of the Chamber again decided to indicate to the respondent Government under Rule 39 that the applicant should not be expelled to Algeria. The measure was to remain in force "for a period of two weeks following the outcome of the asylum proceedings, the ensuing expulsion proceedings as the case [might] be and, as appropriate, of any complaint which [the applicant] lodge[d] with the Constitutional Court in respect of those proceedings."

50. On 15 April 2010 the applicant's legal representative requested the Court to clarify the conditions of the interim measure of 13 August 2008. The advocate explained that the applicant's asylum case had been dismissed by the Supreme Court two weeks before and, in the absence of the written version of the judgment with reasons, the applicant had not had an opportunity to challenge it before the Constitutional Court.

51. On 16 April 2010 the Section Registrar informed the applicant that, in applying Rule 39, the Acting President had wished to ensure that the applicant would not be expelled before he had exhausted domestic remedies. The relevant part of the letter reads:

> "The Rule 39 measure remains in force until the Constitutional Court has pronounced on the applicant's constitutional complaint.
>
> It is clear that the applicant needs the reasons given by the Supreme Court for refusing his asylum case to enable him to lodge a complaint under Article 127 of the Constitution with the Constitutional Court.
>
> The two-week period referred to in the Registry's letter of 13 August 2008 runs from the date on which the final decision is given with reasons and is intended to allow the Court, in the light of the reasons given by the Constitutional Court, to decide whether to lift or continue to apply Rule 39."

52. A copy of the letter was sent to the Government with specific mention that the Rule 39 measure was still in force.

53. On 22 April 2010 the applicant's representative informed the Court that it was impossible to contact the applicant and that, according to media reports, he had been expelled to Algeria earlier that week.

54. On 22 April 2010, on instruction by the President of the Section, the Section Registrar requested the Government to confirm or deny the reports of the applicant's expulsion.

55. On 26 April 2010 the Government informed the Court that the applicant had been expelled on 19 April 2010. The expulsion had been carried out on the basis of the final and binding decision of the Border and Foreigners Police Department of 20 July 2006. Since the Supreme Court's judgment in the asylum proceedings had become final on 16 April 2010, on the national level the applicant was considered to be a foreigner without permission to stay in Slovakia.

56. On 28 April 2010 the Registrar of the Court sent the following letter to the Government:

> "The President of the Court ... has instructed me to express on his behalf his profound regret at the decision taken by your authorities to extradite Mr Mustapha Labsi to Algeria in disrespect of the Court's interim measure adopted under Rule 39 of the Rules of Court.
>
> The President has noted in this connection that on 16 April 2010 your authorities were reminded in clear terms by the Registrar of Section IV of the Court that the Rule 39 measure, first applied on 13 August 2008, continued to remain in force. Nevertheless, the Government extradited the applicant to Algeria on 19 April.
>
> The President is deeply disturbed at this development and is particularly concerned about its implications for the authority of the Court and the unfortunate message which it sends both to other Contracting States faced with a Rule 39 measure and to applicants and potential applicants liable to extradition or expulsion to countries where they may be exposed to the risk of violation of their rights under Articles 2 and 3 of the Convention. As an indication of the seriousness with which he views this turn of events, the President has asked that the Chairman of the Committee of Ministers, the President of the Parliamentary Assembly and the Secretary General of the Council of Europe be informed immediately.
>
> The President also notes that notwithstanding the Court's request of 22 April 2010 for clarification of the circumstances surrounding Mr Labsi's extradition, your letter of 26 April failed to explain why the Rule 39 measure was not complied with. The President expects your authorities to provide an explanation. He would in particular request your authorities to confirm or deny reports that the spokesperson of the Ministry of the Interior declared that his authorities were prepared to run the risk of being found to be in breach of the Convention and that other States which had failed to comply with a Rule 39 measure only had to pay 'a few thousand euros'".

57. In a reply dated 10 May 2010 the Vice-Prime Minister holding the post of the Minister of the Interior stated that all the relevant facts and legal issues had been taken into account prior to the applicant's expulsion to Algeria, which had been carried out in accordance with the police decision of 20 July 2006.

58. The letter indicated, *inter alia*, that the offences of which the applicant had been convicted *in absentia* did not carry a capital penalty. The Algerian authorities had confirmed that the applicant would receive a new trial in which his defence rights would be respected and that all forms of violence against individuals were punishable under Algerian law.

59. The applicant had been convicted and sentenced to five years' imprisonment in France; he had also been banned from the territory of that

State. Information about the applicant, including his involvement in the activities of terrorist groups and the fact that an international arrest warrant had been issued by Algerian authorities, was entered in the Schengen information system. The Slovakian police's decision to expel the applicant was also based on the obligation resulting from Council Directive 2001/40/EC of 28 May 2001, which requires the police in Slovakia to ensure the enforcement of an expulsion decision issued in one of the States within the European Economic Area where a foreigner was sentenced to a prison term of at least one year.

60. On the basis of all the information available the Slovakian police had concluded that the applicant represented a real risk to the security of the Slovak Republic and to society. The Supreme Court, in its decision concerning the applicant's third request for asylum, had reached the same conclusion.

61. The Ministry of the Interior believed that the need to protect society from a person who had been convicted of involvement in a terrorist group prevailed in the present case and that the applicant's expulsion had not been contrary to Slovakia's undertakings under the Convention. The statements which the spokesperson of the Ministry of the Interior had made about the applicant's case and the Court's practice were to be interpreted in that context.

B. The representation of the applicant before the Court

62. At the time of lodging the application the applicant was represented by Ms M. Kolíková, a lawyer practising in Bratislava. In a letter of 9 July 2010 Ms Kolíková informed the Court that her right to practice as an advocate had been suspended as of that date following her appointment as Secretary of State at the Ministry of Justice. The letter further stated that Mr M. Hrbáň, a lawyer practising in Bratislava, was prepared to take over the applicant's representation before the Court. It was impossible to contact the applicant for practical reasons, but the necessary steps would be taken with a view to ensuring his proper representation.

63. On 30 July 2010 Mr M. Hrbáň confirmed that, upon agreement with Ms Kolíková, he undertook to protect the applicant's rights and to submit a power of attorney from the applicant as soon as he could obtain one.

64. On 31 March 2011 and 5 September 2011 Mr Hrbáň informed the Court that he had sent three letters to the applicant in El Harrach prison in Algeria to which he had received no reply. The Ministry of the Interior of the Slovak Republic had refused to inform Mr Hrbáň of the applicant's address on the ground that he had not produced a power of attorney to represent the applicant. Efforts were being made, in co-operation with Amnesty International, to obtain more information about the applicant's whereabouts.

65. Mr Hrbáň stated, with reference to section 17 of the Bar Act 2003, that Ms Kolíková had appointed him as her substitute on the basis of their mutual agreement. The client's consent and submission of a new power of attorney were not required in such circumstances.

66. In a letter of 11 April 2011 Mr Hrbáň submitted information about the applicant's fresh trial and conviction in Algeria which he had obtained from representatives of Amnesty International, one of whom had talked to the applicant's brother. That information corresponds to that which the Algerian Ministry of Justice had furnished to the respondent Government (see paragraph 45 above).

67. On 5 September 2011 Mr Hrbáň informed the Court that he had been unable to establish contact with the applicant. He maintained that he acted in good faith with a view to defending the applicant's interests and that he had not modified the subject-matter of the application as submitted by the representative whom the applicant had appointed. He would continue in his efforts to contact the applicant in Algeria and asked the Court to consider his submissions as an *amicus curiae* intervention.

III. RELEVANT DOMESTIC LAW

A. The Asylum Act 2002

68. Section 13a entitles the Ministry of the Interior to grant subsidiary protection to unsuccessful asylum seekers. Except for cases where the Asylum Act 2002 provides otherwise, such subsidiary protection is to be granted where there are serious grounds to believe that an asylum seeker would be exposed to a real threat of serious lawlessness in the event of his or her return to the country of origin.

69. Pursuant to sub-sections (2)(e) and (d) of section 13c, the Ministry of the Interior should not grant subsidiary protection to an unsuccessful asylum seeker who represents a security threat to the Slovak Republic or a danger to society.

B. The Bar Act 2003

70. Pursuant to section 16(1) and (3), within the framework of a power of attorney issued by a client, a lawyer may ask a different lawyer to represent him or her. However, such substitution of lawyers is not permissible contrary to the client's will.

71. Pursuant to section 17(1), an individually practising lawyer who encounters an obstacle preventing him or her from carrying out his or her duties is obliged, unless other steps are taken with a view to protecting the client's rights and interests, to appoint a different lawyer as his or her

substitute, based on an agreement with the latter and within one month at the latest. The client is to be informed of the arrangement without delay. Where an advocate fails to comply with that obligation, the Bar Association is to appoint a substitute lawyer to represent the client.

C. The Constitutional Court Act 1993

72. Section 20(1) provides that a request for proceedings to be started before the Constitutional Court must indicate, *inter alia*, the decision which the plaintiff seeks to obtain, specify the reasons for the request and indicate evidence in support.

73. Pursuant to section 50(2), a plaintiff has to enclose to his or her complaint a copy of the final decision, measure or the evidence of any other interference in issue.

74. Section 52(1) provides that the filing of a complaint has no automatic suspensive effect. Under subsection 2 the Constitutional Court can issue an interim measure, at the request of the plaintiff, suspending the enforceability of a final decision, measure or other interference.

75. Section 53(3) provides that a complaint to the Constitutional Court can be lodged within two months of the date on which the decision in question has become final and binding or on which a measure has been notified or notice of other interference with the plaintiff's interests has been given. As regards measures and other types of interference, this period commences when the complainant has a practical possibility of becoming aware of them.

IV. RELEVANT INTERNATIONAL DOCUMENTS

A. Council of Europe bodies

76. In a statement published on 29 April 2010 the Secretary General of the Council of Europe expressed his regret that the Slovak authorities had extradited the applicant in disregard of the interim measure ordered by the Court.

77. In a separate statement published on the same day the chairpersons of two committees of the Parliamentary Assembly of the Council of Europe expressed their shock and concern at the decision taken by the Slovak authorities to extradite the applicant to Algeria.

B. The United Nations system

1. The Human Rights Committee

78. The Human Rights Committee considered the third periodic report of Algeria submitted under Article 40 of the International Covenant on Civil and Political Rights and adopted its concluding observations on 1 November 2007. The relevant parts read as follows:

> "11. While noting the assurances given by the State party's delegation on the periodic and unannounced inspections that the authorities and the International Committee of the Red Cross conduct in prisons, the Committee is concerned about the numerous reports from non-governmental sources pointing to the existence of secret detention centres located, allegedly, at Houch Chnou, Oued Namous, Reggane, El Harrach and Ouargla, among others, where persons deprived of their liberty are allegedly being held. (...)
>
> 15. The Committee takes note with concern of the information regarding cases of torture and cruel, inhuman or degrading treatment in the State party, for which the Intelligence and Security Department reportedly has responsibility. (...)
>
> 19. The Committee is concerned that confessions obtained under torture are not explicitly prohibited and excluded as evidence under the State party's legislation."

2. Committee against Torture

79. On 13 May 2008 the Committee against Torture adopted its concluding observations in respect of the third periodic report submitted by Algeria under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They comprise the following parts:

> "6. The Committee takes note of the State party's assurances that Intelligence and Security Department officers are placed under the control of the Public Prosecutor's Office, and that secure detention centres no longer exist as of November 1996. The Committee nevertheless remains concerned about reports of the existence of secret detention centres run by the Department in its military barracks in Antar, in the Hydra district of Algiers, which are outside the control of the courts. The Committee is also concerned about the lack of information showing that the competent judicial authority has taken steps to look into these allegations. (...)
>
> 10. While taking note of the information provided by the delegation of the State party concerning its efforts to provide human rights training for law enforcement personnel, the Committee nevertheless remains concerned at the many serious allegations which it has received of cases of torture and abuse inflicted on detainees by law enforcement officers, including officers of the Intelligence and Security Department. (...)
>
> 18. While noting the Algerian delegation's assurances that confessions are used only for information purposes in legal proceedings, in accordance with article 215 of the Code of Criminal Procedure, the Committee remains concerned about the lack of a provision in the State party's legislation clearly specifying that any statement that is proved to have been obtained as a result of torture may not be cited as evidence in any proceedings, in accordance with article 15 of the Convention. In addition, the

> Committee is concerned that article 213 of the Code of Criminal Procedure specifies that, 'as with any evidence, the evaluation of confessions is a matter for the judge', as well as information received that confessions obtained as a result of torture have been admitted in legal proceedings."

3. Working Group on the Universal Periodic Review

80. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held the review of Algeria on 14 April 2008.

81. While presenting the national report the Minister of Foreign Affairs of Algeria stated that torture and similar practices were prohibited by the fundamental law in all places and circumstances. He also firmly denied the existence of secret detention centres in the country.

82. In the ensuing interactive dialogue it was acknowledged that progress had been made in respect of the criminalisation of torture, human rights training for police officers and improving standards in prisons, but reference was also made to information concerning cases of suspects detained for months or years without notification to the judiciary and without any possibility to communicate with their family or lawyers.

83. The recommendations included, among others, that Algeria should implement measures to protect detainees from torture, cruel, inhuman or degrading treatment, ensure that all cases of persons detained are brought to the attention of the judiciary without delay, and consider facilitating visits by the UN human rights mandate holders.

4. Special Rapporteurs

84. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment solicited an invitation to visit Algeria for the first time in 1997. The visit request is still pending.

85. The request by Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to visit Algeria has been pending since 2006.

86. On 21 July 2010, those two Special Rapporteurs issued a press statement in which they expressed concern about, *inter alia*, transfer of Guantánamo Base detainees to Algeria without a proper assessment of the risks they could face in their country of origin.

C. Amnesty International

87. A press release on the applicant's case issued on 30 November 2007 (EUR 72/012/2007) contains the following background information:

> "Anyone in Algeria suspected of involvement in terrorist activities, or who is believed to possess information about terrorist activities, whether in Algeria or abroad, faces a real risk of secret detention and torture. Amnesty International has

> received dozens of reports of detainees treated in this way, among them people who had returned to Algeria from overseas, either voluntarily or at the hands of foreign governments.
>
> Under Article 51 of the Algerian Criminal Procedures Code, detainees suspected of "terrorist or subversive acts" may be held without charge for a maximum of 12 days. The arresting authorities must immediately give them the opportunity to communicate with their families and to receive visits from them. In addition, any detention beyond four days has to be authorized in writing by the public prosecutor. These requirements are routinely violated in the cases of people held by the Department for Information and Security (...) which specializes in interrogating those thought to have information about terrorist activities.
>
> Before they are either brought before the judicial authorities or released without charge, those arrested are systematically held incommunicado for up to 12 days, and sometimes longer. It is while they are in secret detention in barracks operated by the DRS that detainees are most at risk of torture and other ill-treatment.
>
> Amnesty International has received information on several cases where detainees were held by the DRS for months without contact with the outside world in violation of Algerian and international law, during which time they were reportedly subjected to torture and other ill-treatment. Algeria's civilian authorities have no effective control over the activities of the DRS."

88. In a briefing to the UN Committee Against Torture in respect of Spain, in November 2009, Amnesty International referred to the case of M.S., who had been returned to Algeria from Spain in November 2008. According to information received by Amnesty International, upon arrival in Algeria M.S. was arrested by the Department for Information and Security military intelligence agency and held incommunicado for approximately two weeks. He was subsequently released without charge.

89. In its briefing to the UN Committee Against Torture in respect of France, in April 2010, Amnesty International mentioned the case of Rabah Kadri who, upon his arrival in Algiers on 16 April 2008, was detained by plain-clothes security officers and held incommunicado for twelve days. He was released without charge on 27 April 2008. After his release he said that he had been interrogated about the activities which had led to his conviction and prison sentence in France. He also said that he had signed a statement saying that he had been treated well in detention before his release. Amnesty International noted that, in its experience, the fact that someone had just been released from DRS custody would weigh heavily on their mind when they spoke about their treatment in detention, in case this exposed them to possible reprisals.

90. In a public statement of 28 April 2010 Amnesty International condemned the actions of the Slovak authorities in forcibly returning the applicant from Slovakia to Algeria despite an order for the application of an interim measure from the European Court of Human Rights and the ruling of the Constitutional Court of June 2008. Amnesty International expressed a fear that, upon his arrival in Algeria, the applicant might have been arrested by the DRS. Reference was made to documented cases where

suspects detained by the DRS had been held in unrecognised places of detention, usually military barracks, and denied any contact with the outside world, often for prolonged periods, in violation of Algeria's international obligations as well as the Algerian Code of Criminal Procedure. Amnesty International was further concerned that Algerian courts continued to accept "confessions" extracted under torture or duress.

91. In a public statement of 17 May 2010 Amnesty International urged the Algerian authorities to immediately open an investigation into allegations that detainees in El Harrach Prison in Algiers had been subjected to ill-treatment. Reference was made to the lack of proper investigations into previous reports of abuse of detainees. The statement drew attention to the hunger strike of four detainees in El Harrach Prison. According to information obtained by Amnesty International, the strike had been provoked by actions of the prison guards, including routine verbal abuse of the detainees, all of whom were awaiting trial on terrorism-related charges, such as calling them "terrorists", stripping them naked in front of other detainees and a large number of guards, seemingly to humiliate them, and occasionally slapping them.

92. The statement further indicated that there existed persistent reports of torture or other ill-treatment in Algeria, particularly at the hands of the Department for Information and Security but also at El Harrach Prison. One of the detainees concerned had reported being tied up, drenched in water and beaten with wooden sticks all over his body, including the soles of his feet, by prison guards in the office of the Director of the First Department of the El Harrach Prison on 30 March 2008. After the beating, he had been reportedly placed in solidarity confinement without water or access to the toilet for two days. Even though his lawyer had filed a complaint, no independent, full or impartial investigation had been conducted.

93. The Amnesty International Report 2011, in its relevant part, reads:

> "Officers of the Department of Information and Security (DRS), military intelligence, continued to arrest security suspects and detain them incommunicado, in some cases for more than the 12 days permitted by law, at unrecognized detention centres where they were at risk of torture or other ill-treatment. Impunity for torturing or otherwise abusing security suspects remained entrenched. (...)
>
> Mustapha Labsi was detained for 12 days by the DRS after he was forcibly returned to Algeria from Slovakia on 19 April [2010]. He was then transferred to El Harrach prison. At the end of 2010, he was awaiting trial on charges of belonging to a 'terrorist group abroad'. (...)
>
> In April, security suspects held in El Harrach prison went on hunger strike to protest against alleged ill-treatment by guards who, they said, had insulted, slapped and humiliated them. No official investigation into their allegations was held.
>
> Suspects in terrorism-related cases faced unfair trials. Some were convicted on the basis of 'confessions' that they alleged were extracted under torture or other duress, including some who were sentenced to death by military courts. Some were denied

access to lawyers of their choice. Other security suspects were detained without trial. (...)

Hasan Zumiri and Adil Hadi Bin Hamlili were transferred to Algeria from US custody in Guantánamo By in January; Abdelaziz Naji was transferred in July. All three remained at liberty while investigations continued to determine whether they would face charges of belonging to a 'terrorist group abroad'. Two former Guantánamo detainees, Mustafa Ahmed Hamlily and Abdul Rahman Houari, were acquitted of similar charges in February and November, respectively. Another former Guantánamo detainee, Bachir Ghalaab, was sentenced to a suspended prison term."

THE LAW

I. THE GOVERNMENT'S OBJECTION

94. The Government first asked the Court to consider the standing of Mr Hrbáň to act on behalf of the applicant. They argued that the latter had failed to produce a power of attorney on the basis of which he was entitled to represent the applicant before the Court. With reference to section 16 of the Bar Act 2003, they argued that it had not been clearly shown that it was the applicant's will to be represented by Mr Hrbáň.

95. Mr Hrbáň maintained that he had agreed to protect the applicant's rights with the lawyer whom the applicant had appointed to represent him. Such an arrangement was permissible under section 17(1) of the Bar Act 2003 and in this case indispensable with a view to effectively protecting the applicant's rights.

96. The Court first notes that, at the time of lodging his application, the applicant had duly authorised Ms M. Kolíková to represent him in the present case. He thus complied with Rule 45 § 3 of the Rules of Court which requires, in cases where applicants are represented, a power of attorney or written authority to act to be supplied by their representative (see, to the contrary, *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009).

97. Ms Kolíková had to suspend her legal practice due to her accession to a public post. For that reason, upon mutual agreement with Mr Hrbáň, she informed the Court that the latter would take over the applicant's representation before the Court. Mr Hrbáň confirmed that arrangement, which was permissible under section 17(1) of the Bar Act 2003.

98. It is further relevant that, at the time when the representative appointed to represent the applicant had to cease practising as a lawyer, the applicant had been expelled. Mr Hrbáň attempted to contact the applicant by sending him several letters to Algeria. The Court sees no reason to doubt that Mr Hrbáň acted in good faith with a view to informing the applicant of

the change in his representation and to protecting the applicant's rights and interests before the Court after the latter's expulsion.

99. It has not been shown that the applicant does not wish to pursue the application and, in any event, the Court considers that respect for human rights as defined in the Convention and the Protocols requires its continued examination in the circumstances (Article 37 § 1 *in fine*).

100. In view of the above, and noting that contact has been lost with the applicant following his expulsion by the respondent Government without prior notice and in disregard of the interim measure issued by the President of the Chamber, the argument that Mr Hrbáň lacks standing to act on behalf of the applicant cannot be accepted (see also, *mutatis mutandis, Diallo v. the Czech Republic*, no. 20493/07, §§ 42-48, 23 June 2011, with further references). A different conclusion would run contrary to the idea of effective protection of the rights enshrined in the Convention.

101. It follows that the Government's objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

102. The applicant complained that by expelling him to Algeria the respondent State had breached Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

103. The Government contested the applicant's argument and maintained that the complaint was manifestly ill-founded.

104. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

(a) The applicant

105. The applicant argued that the prohibition of torture incorporated in Article 3 of the Convention was absolute. The arguments put forward by the

Government could not, therefore, justify his expulsion to Algeria, where there was a real threat of his being exposed to treatment contrary to Article 3.

106. In particular, the applicant maintained that Amnesty International had reported cases of ill-treatment of prisoners in El Harrach prison and that the Supreme Court of Slovakia, in its decision of 7 August 2008, had held that the applicant's extradition should not take place as there was a real threat of a breach of Article 3 of the Convention.

(b) The Government

107. The Government submitted that the applicant had been administratively expelled to Algeria on the basis of the Foreigners Police decision of 20 July 2006 as there had been no legal ground for his stay in Slovakia. The expulsion took place after the final effect of the Supreme Court's judgment of 30 March 2010 concerning his asylum request. The applicant had not shown any relevant ground to justify granting him asylum and his continued stay in Slovakia would have represented a security risk.

108. In particular, the applicant had been convicted of participating in a terrorist group and forgery in Algeria in 2005 and, in 2006, he had been convicted in France for belonging to an organised criminal group which had prepared a terrorist attack in several countries and for forging public documents. The available documents justified the suspicion that the applicant might provide support to persons suspected of involvement in worldwide terrorist groups while staying in Slovakia.

109. The Slovak authorities also had proof that the applicant had been in contact with the person who had attempted to carry out a terrorist attack on Northwest Airlines flight 253 Amsterdam - Detroit on 25 December 2009. There were grounds to suspect that the applicant had known about the planned attack, and had informed the perpetrator that he approved of it. This contact had occurred while the proceedings on the applicant's asylum request were pending.

110. Following his conviction in 2006, the applicant was permanently banned from French territory. His data had been entered in the Schengen Information System because he belonged to the radical movement Muslim Action and had participated in Al-Qaida training camps. An arrest warrant had been issued by the Algerian authorities on account of the applicant's membership of a terrorist organisation. The Schengen Information System data further indicated that the applicant had been prohibited from entering Switzerland until 15 July 2011.

111. Thus, the Government argued that the expulsion of the applicant had also pursued the aim of complying with Slovakia's obligations resulting from its membership of the European Union, in particular Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the

expulsion of third country nationals and measures in respect of foreigners which other countries had entered in the Schengen Information System.

112. In letters of 2 July 2007 and 25 September 2007 the Algerian authorities had offered sufficient guarantees that the applicant would not be exposed to a risk incompatible with his rights under Articles 2 and 3 of the Convention in the event of his expulsion.

113. The applicant's extradition was also permissible under the 1951 Convention on the Status of Refugees which excludes the application of that Convention to any person with respect to whom there are serious reasons to believe that he or she (i) has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee, or (ii) has been found guilty of acts contrary to the purposes and principles of the United Nations. Article 33 § 2 of that Convention does not extend the prohibition of expulsion to refugees whom there are reasonable grounds for regarding as a danger to the security of the country they are in, or who, having been convicted of a particularly serious crime by a final judgment, constitute a danger to the community of that country.

114. The Government maintained that the applicant had not referred to any specific threat to his person in his country of origin. Following his return to Algeria, the applicant had been placed in El Harach prison, which belongs to prison facilities administered by the Ministry of Justice.

115. Finally, the Government argued that a number of people who had been returned to Algeria, for example from France or Spain (see paragraphs 88-89 above), had not alleged to have been submitted to treatment contrary to Article 3 of the Convention. They also considered that a number of recent international documents indicated that there had been a general improvement of the situation in Algeria as regards the risk of torture or ill-treatment of persons deprived of their liberty.

2. The Court's assessment

(a) The relevant principles

116. The relevant principles are summed up, for example, in *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 113-121, 23 February 2012; *Saadi v. Italy* [GC], no. 37201/06, §§ 124-148, ECHR 2008; *Boutagni v. France*, no. 42360/08, §§ 44-45, 18 November 2010; *Ismoilov and Others v. Russia*, no. 2947/06, §§ 115, 126 and 127, 24 April 2008; *Khaydarov v. Russia*, no. 21055/09, §§ 96-100 and 111, 20 May 2010; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, §§ 334-339 and 344, ECHR 2005-III; *Garayev v. Azerbaijan*, no. 53688/08, §§ 67-75, 10 June 2010; *Kolesnik v. Russia*, no. 26876/08, § 73, 17 June 2010; *Ben Khemais v. Italy*, no. 246/07, §§ 53-64, 24 February 2009; or *Koktysh v. Ukraine*, no. 43707/07, §§ 57-59 and 63-64, 10 December 2009. They can be summed up as follows.

117. The Court has acknowledged difficulties faced by States in protecting their populations from terrorist violence, which constitutes, in itself, a serious threat to human rights. It has considered it legitimate for Contracting States to take a firm stand against those who contribute to terrorist acts. In the context of the fight against terrorism States must be allowed to deport non-nationals whom they consider to be threats to national security. It is not the Court's role to review whether an individual is in fact such a threat; its only task is to consider whether that individual's deportation would be compatible with his or her rights under the Convention.

118. Expulsion by a Contracting State may engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country. Article 3 is absolute.

119. In any examination of whether an applicant faces a real risk of ill-treatment in the country to which he or she is to be removed, the Court will consider both the general human rights situation in that country and the particular characteristics of the applicant. In a case where assurances have been provided by the receiving State, those assurances constitute a further relevant factor which the Court will consider. It has to be determined whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time.

120. The Court usually assesses the quality of assurances given and whether, in the light of the receiving State's practices, they can be relied upon. In doing so, the Court will have regard, among other things, to such factors as (i) whether the assurances are specific or are general and vague; (ii) who has given the assurances; (iii) whether the assurances concern treatment which is legal or illegal in the receiving State; (iv) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers; (v) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible; and (vi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State.

(b) Application of the relevant principles to the present case

121. When considering the applicant's expulsion in the light of the above principles, the Court notes that in two letters of 2007 the Algerian Ministry of Justice indicated that in the event of his return the applicant would have a fair fresh trial in respect of the offences imputed to him, which were not punishable by capital penalty. Torture and other forms of ill-treatment were subject to heavy penalties under the Algerian Criminal Code and the law in force established a system of control permitting detained persons to seek redress in respect of any alleged breach of their rights. Collaborators of the International Committee of the Red Cross had the possibility of visiting detained persons in private (see paragraphs 41 and 42 above).

122. Thus, the assurances given by the Algerian authorities were of a general nature, and they have to be considered in the light of the information which was available at the time of the applicant's expulsion as to the human rights situation in his country of origin.

123. In that respect it is firstly relevant that the Supreme Court found that the applicant's extradition to Algeria was not permissible on 7 August 2008. With reference to the Court's case-law and a number of international documents it concluded that there were justified reasons to fear that the applicant would be exposed to treatment contrary to Article 3 in Algeria (see paragraphs 31-35 above).

124. Secondly, a real risk of the applicant being exposed to ill-treatment in his country of origin was also acknowledged in the asylum proceedings (see paragraph 24 above).

125. Thirdly, as regards the receiving State's practices, it is particularly relevant that a number of international documents highlighted a real risk of ill-treatment to which individuals suspected of terrorist activities were exposed while in the hands of the DRS. That authority was reported to have detained people incommunicado and beyond the control of judicial authorities for a period from twelve days up to more than one year. Specific cases of torture or other forms of ill-treatment were reported to have occurred during such detention (see paragraphs 78, 79, 87, 92 and 93 above).

126. In the judgment *Daoudi v. France* (no. 19576/08, §§ 67-73, 3 December 2009) delivered only several months before the present applicant's expulsion, the Court based its conclusion that there had been a breach of Article 3 as a result of Mr Daoudi's expulsion to Algeria on the existence of such practices of the DRS. Although it had not been shown that such practices were systematic, the Court found no indication that they had stopped or had diminished at the material time. It was further relevant that persons detained by the DRS were deprived of appropriate guarantees against torture and of the possibility of seeking redress before national courts or international bodies.

127. Similarly, in *H.R. v. France* (no. 64780/09, §§ 49-65, 22 September 2011) the Court concluded that there was a serious risk of the applicant being subjected to treatment contrary to Article 3 of the Convention in the event of his removal to Algeria. In that case the Algerian authorities had convicted the applicant *in absentia* of having founded a terrorist group and had imposed a life sentence on him. The risk of treatment contrary to Article 3 resulted, in particular, from the continued practice of the DRS of gathering information from people suspected or convicted of terrorist activities using methods which had been denounced by a number of international reports. The Court further noted that there had been no significant developments as regards the situation in Algeria between the delivery of the *Daoudi* judgment on 3 December 2009 and February 2011.

128. In view of the documents before it the Court finds no reason for reaching a different conclusion in the present case. Accordingly, at the time of his expulsion, there were substantial grounds for believing that the applicant faced a real risk of being subjected to treatment contrary to Article 3 of the Convention in his country of origin. The Government's argument that the applicant's expulsion was nevertheless justified on the ground that he represented a security risk cannot be accepted. The guarantee under Article 3 of the Convention is absolute and it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (see *Saadi*, cited above, § 138).

129. The Court has also considered the Government's reference to reports on cases where persons returned to Algeria had not been subjected to ill-treatment. However, it does not appear from the information available that there had been a general change in practice and that there were appropriate guarantees protecting the applicant from ill-treatment at the time of his expulsion. It is to be noted in this respect that the UN special rapporteurs' requests to visit Algeria have been pending since 1997 and 2006 respectively (see paragraphs 84 and 85 above).

130. Following his expulsion the applicant was reported to have been detained by the DRS for twelve days before being transferred to El Harrach prison for a trial. It does not appear that there was any follow-up to the request for a visit of an official of the Slovakian Ministry of the Interior to be arranged with a view to examining the applicant's situation in Algeria. Furthermore, the Ministry of the Interior refused to provide assistance to Mr Hrbáň with a view to establishing contact with the applicant (see paragraphs 44, 64 and 93 above). As a result, compliance with the assurances given could not be objectively verified through diplomatic or other monitoring mechanisms.

131. Thus, the developments subsequent to the applicant's expulsion are not capable of demonstrating that the assurances by the Algerian authorities provided, in their practical application, a sufficient guarantee that the

applicant would be protected against the risk of ill-treatment. They cannot therefore affect the conclusion which the Court reached in paragraph 128 above.

132. There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

133. The applicant complained that he had been deprived of an effective remedy in respect of his complaint under Article 3. He relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

134. The applicant argued, in particular, that he had been expelled without having been able to effectively challenge the Supreme Court's judgment of 30 March 2010 before the Constitutional Court. He referred to the fact that the Supreme Court's judgment had been served on him on Friday, 16 April 2010 and that he was expelled on Monday, 19 April 2010.

135. The Government argued that the applicant and his representative had attended the hearing on 30 March 2010 at which the Supreme Court had delivered its judgment. The applicant could have, therefore, lodged a constitutional complaint and requested the Constitutional Court to issue an interim measure even before the service and final effect of the Supreme Court's judgment on 16 April 2010.

136. The Court has concluded above that the return of the applicant to Algeria amounted to a violation of Article 3 of the Convention. The complaint lodged by the applicant on this point is therefore "arguable" for the purposes of Article 13, and it must likewise be declared admissible.

137. The Court reiterates that in the circumstances of extradition or expulsion and a claim in conjunction with Article 3 of the Convention, given the irreversible nature of the harm which might occur if the alleged risk of torture or ill-treatment materialised, and the importance which the Court attaches to Article 3, the notion of an effective remedy under Article 13 requires (i) close and rigorous scrutiny of a claim that there exist substantial grounds for believing that there was a real risk of treatment contrary to Article 3 in the event of the applicant's expulsion to the country of destination, and (ii) a remedy with automatic suspensive effect (for recapitulation of the relevant case-law see *Diallo v. the Czech Republic*, cited above, § 74, with further references).

138. The present applicant's complaint under Article 13 is based on the fact that, due to his expulsion, he was prevented from attempting to obtain redress by means of a constitutional complaint following the final decision

given in the asylum proceedings. In those proceedings the applicant's claim that there was a real risk of ill-treatment in his country of origin had also been addressed. In respect of the final decision of ordinary courts in the asylum proceedings the applicant was entitled to seek redress by means of a complaint to the Constitutional Court. However, that remedy had no automatic suspensive effect.

139. Furthermore, and even more importantly, the applicant was expelled to Algeria only one working day following the service on him of the Supreme Court's judgment of 30 March 2010. Noting that the period for introduction of a constitutional complaint starts running from the final effect of the decision in issue and that a complaint has to be accompanied by such decision, the Court cannot accept the Government's argument that he could have instituted constitutional proceedings prior to the service of the Supreme Court's judgment of 30 March 2010. In the circumstances, the applicant was deprived of practical possibility of using the constitutional remedy prior to his expulsion.

140. There has therefore been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

141. Finally, the applicant complained that, as a result of his expulsion contrary to the interim measure issued under Rule 39 of the Rules of Court, the respondent Government had failed to comply with its obligations under Article 34 of the Convention.

142. Article 34 of the Convention reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

143. Rule 39 of the Rules of Court reads as follows:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Notice of these measures shall be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

A. Admissibility

144. The Government admitted that the complaint was not manifestly ill-founded.

145. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

146. The applicant reiterated that his expulsion in disregard of the measure indicated under Rule 39 of the Rules of Court had been contrary to his right of individual application as guaranteed by Article 34 of the Convention.

147. The Government, with reference to the explanation by the Vice-Prime Minister and the Minister of the Interior of 10 May 2010 (see paragraphs 57-61 above), argued that the enforcement of the final decision on the administrative expulsion of the applicant had been based on relevant reasons.

148. The Court reiterates that by virtue of Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 (for recapitulation of the relevant case-law see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 102-129, ECHR 2005-I; *Aoulmi v. France*, no. 50278/99, § 110, ECHR 2006-I (extracts); *Olaechea Cahuas v. Spain*, no. 24668/03, §§ 71-82, ECHR 2006-X (extracts); *Mostafa and Others v. Turkey*, no. 16348/05, §§ 38-44, 15 January 2008; *Ben Khemais v. Italy*, no. 246/07, §§ 80-88, 24 February 2009; *Paladi v. Moldova* [GC], no. 39806/05, §§ 84-92, 10 March 2009; or *Toumi v. Italy*, no. 25716/09, §§ 72-77, 5 April 2011).

149. In the present case, following the expulsion of the applicant to Algeria the level of protection that the Court was able to afford the rights which he was asserting under Article 3 of the Convention was irreversibly reduced. The expulsion occurred prior to the exchange of observations of the parties on the admissibility and merits of the application. The applicant's representative has lost contact with him since his expulsion. As a result, the gathering of evidence in support of the applicant's allegations has proved more complex.

150. The Court was thus prevented by the applicant's expulsion to Algeria from conducting a proper examination of his complaints in

accordance with its settled practice in similar cases. It was further prevented from protecting the applicant against treatment contrary to Article 3 of which he had been found to face a real risk in his country of origin at the relevant time (see paragraphs 128 and 132 above). As a result, the applicant has been hindered in the effective exercise of his right of individual application guaranteed by Article 34 of the Convention.

151. There has accordingly been a violation of Article 34 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

153. Mr Hrbáň, on the applicant's behalf, claimed compensation in respect of non-pecuniary damage. He left its amount at the Court's discretion. Mr Hrbáň admitted that practical problems might arise with transmitting a possible Court award to the applicant. He undertook to make further attempts with a view to contacting the applicant.

154. The Government maintained that any award under this head should reflect those made in comparable cases.

155. The Court considers it appropriate to award EUR 15,000 in respect of non-pecuniary damage, to be held by Mr Hrbáň in trust for the applicant.

B. Costs and expenses

156. Mr Hrbáň, on the applicant's behalf, also claimed EUR 1,281.17 for the costs and expenses incurred before the domestic authorities and EUR 1,864.77 for those incurred before the Court.

157. The Government did not object to the award of a demonstrably incurred sum in respect of costs and expenses in case of a finding by the Court of a breach of the applicant's rights.

158. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads. This amount is to be paid directly into the bank account of Mr Hrbáň.

C. Default interest

159. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection as regards the standing of Mr M. Hrbáň to act on the applicant's behalf;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's expulsion to Algeria;

4. *Holds* that there has been a violation of Article 13 taken together with Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 34 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which sum is to be held by Mr Hrbáň in trust for the applicant;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of Mr Hrbáň;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the claim for just satisfaction submitted by Mr Hrbáň on behalf of the applicant.

Done in English, and notified in writing on 15 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President